IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.9258 OF 2005

Sushil Keshrinath Sawe .. ..Petitioner

Versus

Smt.Subhalaxmi Prabhakar Kale & Ors. ..Respondents

Mr.A.L.Gore for petitioner

Mr.Arif Bookwala with Z.A.Jariwala i/b M/s. Thakore Jariwala for respondent Nos.2 and 3

CORAM : P.V.KAKADE, J.

DATE : 24TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The Petitioner has challenged the order of the lower appellate court dated 3.7.2004 dismissing the appeal and confirming the judgment and order passed by trial

court in RAE Suit No.569 of 1970.

3. In the year 1970 the Petitioner had filed Ejectment Application under Section 47 of Presidency of Small Causes Court Act and sought recovery from the respondent vacant and peaceful possession of one room on the first floor facing West side between waiting room and dining hall, which is the premises in question. The petitioner came with the case that the said premises was occupied by the respondent as his licensee and that the licence has been terminated by a notice dated 17.11.1969. The respondent had challenged the said application denying the allegations that he was a Licensee and has stated that he himself as well as the applicant both were entitled to the benefits of tenancy rights of the entire flat on the first floor in House No.9 in Tara Temple Lane and the tenancy still stood in the name of Moreshwar G. Sawe, the deceased father of the applicant, and the respondent. The Respondent further came with the case that by filing this Ejectment Application the applicant had tried to mislead the court and hence application was sought to be dismissed.

. The Trial Court came to the conclusion that the

respondent had proved that he was a co-tenant in the suit premises and further that the suit premises was taken by the deceased father of the applicant by common benefit of the joint Hindu Family. It was also held that the plea of the applicant was not established to the effect that the respondent was licensee and as such the application came to be dismissed.

. The suit came to be adjudicated against the petitioner due to which he preferred an appeal bearing Appeal No.693 of 2000. The appeal was directed against the order dated 26.4.2000 passed in the said suit wherein the learned trial judge decreed the plaintiff's suit and plaintiff was declared as co-tenant of the suit premises. The appellate court after hearing both the parties came to the conclusion that Keshrinath Moreshwar Sawe father of the plaintiff was entitled to joint tenancy after the death of the original tenant Moreshwar Sawe and after the death of deceased Jagannath Sawe, the plaintiff was entitled to joint tenancy of the suit premises under the provisions of the Bombay Rent Act. It was further held that the plaintiff was not entitled for decree for possession against the defendant nos.2 and 3 and further it was held that the defendant no.2 was adopted son of

late Jagannath Sawe. On these aspects, it was held that the defendant no.2 had right, title and interest in the suit premises under Section 5(11) (c) of the Bombay Rent Act and as such the order of the trial court came to be confirmed and the appeal was dismissed. Hence the present petition.

4. At the outset, it may be noted that the learned counsel for the petitioner sought to make much ado about the evidence revolving around the issue of adoption on the ground that the respondent had given wrong date of birth of the adopted son in question and therefore, the adoption itself was rendered illegal by virtue of Section 10 of Hindu Adoption and Maintenance Act, 1956. However, perusal of judgments of both the courts below are seen to have dealt with this issue holding that the adoption is established and therefore, it is held that the defendant no.2 was adopted son as alleged. I do not see any reason why this finding should be interfered with in Writ jurisdiction, especially when there is no perversity found in recording the same.

5. So far as issue of joint tenancy is concerned, both the courts below are seen to have appreciated the

evidence on record properly in order to hold that the plaintiff is the family member of the original tenant and entitled to tenancy rights in respect of the suit property under Section 5(11)(c) of the Bombay Rent Act. The learned counsel for the petitioner sought to put reliance on the ruling of this Court in the case of **Jaysen Jayant Rele vs Shantaram Ganpat Gujar reported in AIR 2002 Bombay 462**. On perusal of the judgment of the learned Single Judge, it is clear enough that it is not applicable to the present case especially when the issue of adoption is found to be properly dealt with and adjudicated.

6. Under the circumstances, I hold that there is no merit in the Petition and it deserves to be dismissed. The Petition stands dismissed with no order as to costs.